

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0828, State of New Hampshire v. Guy Michael Wheeler, the court on January 22, 2008, issued the following order:

The defendant, Guy Michael Wheeler, appeals his convictions for burglary, robbery and theft of a firearm. He argues that the trial court erred when it failed to instruct the jury that to be sufficient, circumstantial evidence must exclude all rational conclusions consistent with innocence. We affirm.

The State does not contest whether the issue before us has been preserved, *see, e.g., Cloutier v. City of Berlin*, 154 N.H. 13, 22-23 (2006); we will assume without deciding that it is properly before us.

When reviewing jury instructions, we evaluate allegations of error by interpreting the disputed instructions in their entirety, as a reasonable juror would have understood them, and in light of the evidence in the case. *State v. Drake*, 155 N.H. 169, 171 (2007). We determine whether the instructions adequately and accurately explain each element of the offense and reverse only if the instructions did not fairly cover the issues of law in the case. *Id.*

The defendant contends that because the State's only direct evidence in this case was presented through a witness whose testimony was "fraught with inconsistencies and tainted by his motive to implicate [the defendant]," the trial court should have given a circumstantial evidence instruction. In *State v. Newcomb*, 140 N.H. 72, 80-81 (1995), we held that, to be sufficient to convict, circumstantial evidence must exclude all rational conclusions other than the guilt of the defendant in a case where there is only circumstantial evidence to support conviction.

As the defendant concedes, the State presented direct evidence to support his conviction in this case. Whether the evidence was presented through a credible witness was for the jury to determine. *See, e.g., State v. Flynn*, 151 N.H. 378, 382 (2004). "[T]he law makes no distinction between direct evidence of a fact and evidence of circumstances from which the existence of a fact may be inferred." *Newcomb*, 140 N.H. at 81. To have given an instruction on

circumstantial evidence in this case where the State presented both direct and circumstantial evidence could have confused or misled the jury.

Having reviewed the jury instructions in their entirety, we find no error.

Affirmed.

BRODERICK, C.J., and DALIANIS and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**